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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports due in 2000

Addendum

UKRAINE*

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[31 July 2000]

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* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and Official Records of the General Assembly, Forty-fifth Session, Supplement No. 44 (A/45/44), paras. 503-532. For the second periodic report, see CAT/C/17/Add.4; for its consideration, see CAT/C/SR.125 and Add.2 and Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44 (A/48/44), paras. 116-132. For the third periodic report, see CAT/C/34/Add.1; for its consideration, see CAT/C/SR.283, 284/Add.1 and 287 and Official Records of the General Assembly, Fifty-second Session, Supplement No. 44 (A/52/44), paras. 122-152.

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I. INTRODUCTION

1. This report is submitted pursuant to article 19, paragraph 1, of the Convention, which entered into force in Ukraine on 24 February 1987. It has been compiled in accordance with the general guidelines regarding the form and content of reports to be submitted by States parties under article 19, paragraph 1, of the Convention. It covers the period from 1997 to 1999.

2. Since submitting its third periodic report, Ukraine has withdrawn the reservations it entered when it signed the Convention on 27 February 1986 regarding its refusal to recognize the jurisdiction of the Committee against Torture. By Act No. 234-XIV of 5 November 1998, under which these reservations to the Convention against Torture were withdrawn, Ukraine fully acknowledged the Committee's jurisdiction over its territory, as provided for by articles 21 and 22 of the Convention.

3. The report was prepared as a collaborative effort by the Ministry of Justice, the State Penal Correction Department, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the Office of the Procurator-General, the Security Service, the Supreme Court, the Ministry of Labour and Social Policy, the Ministry of Public Health, the Ministry of Education and Science, and the State Statistical Committee.

4. Since the submission of its third periodic report in 1997, Ukraine has followed an unswerving policy of advancing the interests of the individual and according primacy to international law, as reflected in the Constitution and constantly evolving legislation.

5. The work of the Ukrainian penitentiary system is closely regulated by the Corrective Labour Code, which was adopted in 1970 and entered into force in 1971. Since Ukraine contributed to the elaboration of the Standard Minimum Rules for the Treatment of Prisoners in its capacity as a Member State of the United Nations, the Code incorporates the main principles outlined in these Rules. The Code conforms to the Rules and is still in force.

6. Since independence, more than 100 amendments and additions have been made to the Ukrainian Corrective Labour Code, all of which have been designed to humanize and democratize the execution and serving of punishments and ensure that the basic rights and freedoms of the individual are observed.

7. The systematic overhaul of the penal correction system in line with defined objectives is now in its ninth year, as mapped out in the reform blueprint promulgated by the Decision of the Cabinet of Ministers of 11 July 1991.

8. On the assumption that the penitentiary system should be an independent social entity, and in conformity with the reform blueprint and the recommendations made by experts from the Council of Europe, the Ukrainian President L.D. Kuchma promulgated a decree on 22 April 1998 establishing the State Penal Correction Department as a central government authority based in the Ministry of Internal Affairs Main Administration for Penal Correction. The same decree outlined an array of measures to reform the work of the penal correction system. On 31 July 1998 the President issued a decree ratifying the Regulations on the State Penal Correction Department.

9. On 11 December 1998 the *Verkhovna Rada* of Ukraine adopted the State Penal Correction Department (Consequent Amendments and Additions to Certain Legislation) Act, thereby establishing the legal framework for the autonomous operation of the Department.

10. On 12 March 1999 another presidential decree finally transferred the Department from the jurisdiction of the Ministry of Internal Affairs.

11. The reorganization of the Ukrainian penal correction system has simplified the administrative framework, which has become more flexible, responsive and efficient now that all resources are concentrated in a single department, i.e. the warding, control and security functions have been amalgamated. This arrangement also excludes extraneous functions and interference by officials not directly responsible for the work of the penal correction system.

12. In 2000 the *Verkhovna Rada* adopted the Correctional System (Structure and Personnel) Act, which stipulates that the proportion of institutional personnel shall be 33 per cent of the total population of convicted prisoners or persons deprived of their liberty.

13. In 1997 the Council of Europe published an assessment of the Ukrainian prison system as part of a joint programme of the European Community and the Council of Europe to reform Ukraine's legal system, local government and law-enforcement apparatus. The assessment was based on a study of Ukrainian law and its enforcement by 22 institutions in 8 different regions. There were also recommendations on reforming the penal correction system.

14. Great efforts have been made to ensure respect for human rights and the alignment of national legislation with European norms and standards, and in recent years significant steps have been taken to humanize criminal punishments, strengthen the rule of law, and stabilize the situation in custodial institutions.

15. To ensure proper conditions for the detention of remand prisoners and prisoners under sentence, in 1994 the Cabinet of Ministers adopted a special programme to align conditions in custodial institutions with international standards. The scheme yielded an extra 26,200 places. Efforts to increase the number of available places and improve conditions of detention are continuing.

16. The increase in the inmate population is seriously exacerbating problems connected with accommodation, job placement and the development of proper conditions for detainees and prisoners. Accordingly, as well as making efforts to increase the capacity of custodial establishments and upgrade them to international standards, Ukraine is working to reduce the size of the prison population.

17. Motivated by humanist principles, the *Verkhovna Rada* has passed amnesty laws during the period 1997-2000 which have reduced the number of convicted prisoners. However, the biggest decline in the number of convicted persons will be brought about by reforms of the justice system and the adoption of new criminal legislation making greater provision for non-custodial sentences. This more than anything else will defuse the accommodation crisis in prisons and remand units.

18. Future reform is intended, first and foremost, to give the penal correction system a more human face by taking account of international experience, humanist principles, the rule of law, democracy, fairness, and differentiated and individually tailored approaches to re-educating offenders. Also envisioned are radical changes to existing legislation, reorganization of the penal correction system, and the adoption of a new Code for the Execution of Criminal Penalties that takes account of international norms and standards and foreign experience. The draft Code is a watershed document which satisfies modern requirements and reflects international penitentiary practice. Among other things, it proposes to introduce innovative procedures and conditions for the execution of criminal penalties based on a differentiated and individual approach to reforming offenders. To this end, penal establishments will be reclassified with respect to their level of security, conditions of detention will vary according to how far the offender has been reformed, and inmates will have a guaranteed right to be visited, receive messages and packages, purchase food, and transfer their prison wages to personal accounts. Prisoners' welfare, health care and hygiene requirements will be more clearly regulated, and psychological, educational and other assistance will be provided. The reform makes provision for greater public involvement in work with offenders and heightened supervision of the work of penal establishments.

19. The Penal Correction Department has also prepared a prison service bill outlining the organizational and legal principles of the work of the service and specifying the legal and social protection available to personnel, thereby raising the prestige of the profession and providing job incentives.

20. In February 1998 and July 1999 a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited correctional establishments in Ukraine in order to evaluate compliance by prison authorities with the provisions of the European Convention of the same name. By and large, the Committee gave a positive assessment of efforts by the prison authorities to develop correctional establishments, but at the same time it issued a number of recommendations concerning the regime applied to prisoners convicted of capital crimes and the general conditions in which remand prisoners are held.

21. In order to ensure closer cooperation with CPT, on 20 November 1999 the Cabinet of Ministers issued Order No. 1257 designating the Penal Correction Department as the national liaison authority for relations with CPT. The Penal Correction Department has proceeded to carry out these recommendations. Many have been successfully implemented, and work is continuing to ensure compliance with the rest.

22. Particular attention has been paid to health care for special categories of prisoners in the correctional system, and closer contacts have been established between the medical units at penal correction establishments and treatment centres of the Ministry of Public Health. Urgent cases are dealt with exclusively in infirmaries of the Ministry.

23. All detainees and prisoners must undergo a compulsory medical check-up in order to avert the spread of infectious diseases.

24. Staff responsible for prison amenities, medical officers and warders perform constant checks to ensure that inmates' food is prepared on time and to a decent standard, and that sanitary and hygiene standards are maintained.

25. The following new procedures and methods have been introduced at correctional labour facilities:

Rooms have been set aside to perform acts of worship and religious services;

Representatives of religion pay visits at regular intervals;

Provision has been made for pastoral visits and psychological counselling;

The former cumbersome system of numbering correctional institutions has been superseded by a system whereby establishments are designated by their locality.

26. Organizational and operational ties with the military have been severed, and accordingly the supervisory, security and warding functions formerly exercised by Ministry of Internal Affairs troops were transferred to the Penal Correction Department in 1998-1999.

27. Other measures to improve amenities, medical care, food and job placement for detainees and prisoners are being implemented according to plan. Work is continuing to align conditions of detention in remand centres and prisons with international standards and to comply with the core provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These efforts are kept under constant review by the Government.

28. Ukraine has signed and ratified Protocol No. 6 to the European Convention on Human Rights providing for abolition of the death penalty in peacetime. Pursuant to the Criminal, Criminal-Procedure and Corrective Labour Codes (Amendment) Act (No. 1483-III) of 22 February 2000, the death penalty has been replaced by life imprisonment.

29. The following statistics apply in respect of persons convicted of capital crimes whose sentence has not been carried out:

January-February 1997 - 168 persons, 9 of whom were put to death (for sentences handed down in previous years);

1998 - 131 persons;

1999 - 120 persons.

30. No one convicted of a capital crime in 1998 or 1999 has been put to death, according to reports reaching the courts. Since the beginning of March 1997 there has been a moratorium on the use of the death penalty in Ukraine and no executions have taken place.

II. MEASURES AND CHANGES AFFECTING IMPLEMENTATION OF ARTICLES 1-16 OF THE CONVENTION AGAINST TORTURE

Articles 1 and 2

31. In the spirit of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention), article 28 of the Ukrainian Constitution states:

> "Everyone has the right to respect for his or her dignity. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment."

This constitutional guarantee, which is inspired directly by article 2 of the Convention, is self-executing and an indispensable starting point for further amplification in other Ukrainian legislation.

32. Ukrainian law has built-in safeguards stipulating that criminal punishment may only be imposed in accordance with procedures recognized by law and pursuant to the judgement of a court. No accusation may be based on evidence obtained by unlawful means or assumptions (Constitution, art. 62; Criminal Code, art. 3). Article 15 of the Code of Criminal Procedure states that justice in criminal cases is dispensed by the courts alone, which are independent and subject only to the law (Code of Criminal Procedure, art. 18).

33. Article 22 of the Criminal Code stipulates that the purpose of punishment shall not be to inflict physical suffering or degrade the individual.

34. In accordance with article 2, paragraph 3, of the Convention, the current Ukrainian Constitution contains safeguards against the issuance and execution of manifestly criminal orders or directives (art. 60). Furthermore, in accordance with article 2, paragraph 2, of the Convention, the Constitution stipulates that a number of human rights and freedoms, including those referred to above, cannot be restricted in any circumstances, even in wartime or during a state of emergency (art. 64).

35. Article 7 of the Judicature Act states that justice in Ukraine is administered in strict accordance with Ukrainian legislation. In instances provided for by international agreements, the Ukrainian courts must apply legislation in accordance with the agreements concerned (Act of 24 February 1994). In dispensing justice in criminal matters, judges and people's assessors are independent and subject to the law alone.

36. Judges and people's assessors hear criminal cases on the basis of the law in circumstances precluding extraneous influence (Code of Criminal Procedure, art. 18).

Article 3

37. Neither the law nor practice has changed as far as these provisions are concerned. Ukraine is in compliance with these articles.

Article 4

38. "Torture" is not currently defined in Ukrainian criminal law as a specific criminal offence. A bill to make it so has been introduced in the *Verkhovna Rada*.

39. Paragraph 2 of the *Verkhovna Rada*'s Decision No. 1261-XIV introducing the bill to amend and supplement the Criminal Code with a view to making torture a specific criminal offence punishable in the harshest terms states: "The Committee of the *Verkhovna Rada* on legislative support for law-enforcement activity and measures to deal with organized crime and corruption shall be instructed to finalize a bill to amend and supplement the Criminal Code with a view to making torture a specific criminal offence punishable in the harshest terms. Consideration shall be taken of the proposals and comments by Ukrainian people's deputies and other entities possessing the right of legislative initiative, and the bill shall be referred to the *Verkhovna Rada* for second reading".

40. Article 22, paragraph 3, of the Code of Criminal Procedure explicitly prohibits attempts to obtain testimony from accused persons or other parties to proceedings by violence, threats or other unlawful means.

41. As noted in the previous (third) periodic report of Ukraine, torture and other cruel, inhuman or degrading treatment or punishment is broadly covered by articles 165, 166, and 167 of the Criminal Code (official misconduct).

42. A special provision in the Criminal Code (art. 175) states that, when conducting an initial inquiry or pre-trial investigation, officials who extract evidence under duress shall be held liable for their actions, and makes provision for straightforward or more serious instances of this offence. An interrogator who uses unlawful methods to extract evidence from an individual during an initial inquiry or pre-trial investigation shall be deprived of his liberty for up to three years. If this offence is compounded by the use of violence or bullying of the person undergoing interrogation, the offender shall be deprived of his liberty for between two and eight years.

43. The Liability of Officials (Amendments and Additions, Certain Legislation) Act of 11 July 1995 amended articles 165, 166 and 167 of the Criminal Code by increasing criminal liability for official misconduct.

44. Between 1996 and 1999 the Ministry of Internal Affairs received:

554 complaints of unlawful arrest, detention or search involving the use of physical force and discourtesy to members of the public (110 in 1996, 131 in 1997, 151 in 1998, 162 in 1999);

1,672 complaints of other unlawful acts (229 in 1996, 407 in 1997, 560 in 1998, 482 in 1999).

During the same period 864 internal affairs officers were convicted of official misconduct (243 in 1996, 237 in 1997, 204 in 1998, and 180 in 1999), of whom 568 were convicted of action *ultra vires* or abuse of official position.

Article 5

45. Neither the law nor practice has changed as far as these provisions are concerned. Ukraine is in compliance with this article.

Article 6

46. On 4 February 1994 the *Verkhovna Rada* adopted the Aliens (Legal Status) Act, article 22 of which states: "Aliens have the right to defend their personal, proprietary and other rights in the courts and other State bodies. Aliens shall enjoy the same procedural rights in legal proceedings as Ukrainian citizens". Article 33 of the Act states that if an international treaty to which Ukraine is a party lays down rules different from those contained in the Act, the rules in the international treaty shall prevail.

47. The State obligations provided for under this article of the Convention as regards the custody of alleged torturers and the conduct of investigations (checks) with a view to subsequent extradition and criminal prosecution are dealt with in more detail by international treaties on the extradition of lawbreakers. At the same time it should be noted that such treaties lay down general rules for extradition; they do not focus on specific offences.

Article 7

48. The current criminal procedure law of Ukraine law provides a precise definition of the procedure and grounds for undertaking investigative actions such as commencement of criminal proceedings, short-term detention of suspects, pre-trial detention, interrogation, indictment, and property searches.

49. Under article 5 of the Code of Criminal Procedure, charges may be brought only on the basis of and in accordance with procedures recognized by law. An investigating officer may remand a person in custody as a preventive measure only if authorized to do so by a procurator. An investigator or body conducting an initial inquiry is also empowered to detain a person on suspicion of committing an offence. Correct procedure dictates that detention must be officially recorded as soon as a detainee is arrested. No one may be detained for longer than 72 hours. An investigating officer must immediately notify a procurator of every arrest, and in any event no later than 24 hours after the person has been taken into custody. The procurator then assesses whether detention is justified and has 48 hours to decide whether the detainee should be remanded in custody or released. A supervisory apparatus consisting of departmental, procuratorial and judicial elements ensures that the investigator or body conducting an initial inquiry (the militia) follows correct procedure when conducting pre-trial investigations.

50. Article 3 of the Criminal Code reflects the basic tenets of criminal law, namely the rule of law and the principle that a person shall be held responsible for his acts when there is evidence of his guilt. Paragraph 2 of the article states explicitly that "no one shall be judged guilty of an offence or subjected to criminal penalty other than on the basis of a court judgement and in accordance with the law", thereby satisfying the provisions of article 9 of the Covenant.

51. Unlawful deprivation of liberty is an offence under article 123 of the Criminal Code.

52. As soon as an individual is taken into custody, he shall be entitled to the services of a defence counsel. If he cannot afford the services of a lawyer, his right of defence shall be guaranteed by the State.

53. All arrested or detained persons shall be informed without delay of the reasons for their arrest or detention, apprised of their rights, and, as soon as they are taken into custody, given the opportunity to defend themselves in person or through legal assistance in the form of defence counsel. All detainees have the right to appeal their detention in a court of law at any time (Constitution, art. 29).

54. Suspects and accused persons have a variety of rights as enumerated in articles 3 and 43-1 of the Code of Criminal Procedure, specifically the right to know the nature of the charges against them, to agree or refuse to give testimony, to submit evidence, to have defence counsel and to communicate with their counsel before initial interrogation, to lodge petitions, and to file complaints regarding the actions or decisions of persons conducting an initial inquiry, investigators, procurators, judges or the courts.

55. Remand prisoners and their defence counsel and legal representatives may appeal the procuratorial decision remanding the prisoner in custody at any stage in the preliminary investigation until the case is forwarded to a procurator together with the bill of indictment (Code of Criminal Procedure, art. 236-3).

56. During the period 1996-1999 investigators of the internal affairs agencies arrested 337,569 suspects (82,096 in 1996, 83,376 in 1997, 86,303 in 1998, and 85,794 in 1999). Preventive measures excluding deprivation of liberty were taken against 88,342 people, or 26.2 per cent of the total number arrested (20,489 in 1996, 21,102 in 1997, 23,771 in 1998, and 22,980 in 1999). During the same period a total of 850,582 accused persons were committed for trial (209,037 in 1996, 213,306 in 1997, 212,441 in 1998, and 215,798 in 1999). Of these, only 249,227 or 29.3 per cent were remanded in custody (61,607 in 1996, 62,274 in 1997, 62,532 in 1998, and 62,814 in 1999).

57. In the event of dismissal of criminal charges owing to a lack of evidence that a crime has been committed or the impossibility of proving the suspect's involvement in a crime, or if a court hands down a judgement of acquittal, the body conducting the initial inquiry, the investigator, the procurator or the court must apprise the individual of the procedure for seeking redress and must take the necessary steps to compensate the individual in respect of wrongful conviction, indictment, detention, enforcement of preventive measures, and unlawful prolongation of a fixed punishment after the entry into force of a criminal law nullifying the penal consequences of the original offence (Code of Criminal Procedure, art. 53-1).

58. Persons taken into custody in connection with criminal proceedings are detained in strict compliance with the relevant provisions of the Constitution, the Universal Declaration of Human Rights, and other international legal norms and standards concerning the treatment of prisoners. The Pre-Trial Detention Act of 30 June 1993 proscribes actions intended to cause physical or mental suffering or to degrade the individual.

59. In order to ensure full and strict compliance with the requirements of the Universal Declaration of Human Rights, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Ukrainian Constitution, the Militia Act, the Pre-Trial Detention Act, and other regulatory acts concerning such matters, the Ministry of Internal Affairs has taken a variety of organizational and practical steps to improve the conditions in which arrested or detained persons are held in special militia facilities. A programme to develop the temporary holding facilities run by the internal affairs agencies has been drawn up, which provides for measures to safeguard the rights and legitimate interests of persons detained in such facilities, including repayment of debts in respect of inmates' food, provision of the required number of beds and exercise yards, ongoing supervision by medical services of the health and conditions of detention of special categories of prisoners, and the possibility for inmates to watch television and have access to libraries. A series of refresher courses for all categories of internal affairs personnel engaged in guarding or escorting detainees or monitoring the work of special militia facilities has been planned, developed and conducted over the course of the year.

60. To prevent the use of torture and other forms of violence in special militia facilities, Ministry of Internal Affairs departmental regulations stipulate that militia officers employed in such institutions are entitled to use physical force and special means of restraint against offenders only in exceptional circumstances. The list of circumstances is restrictive.

61. Whenever there is an incident involving improper treatment of persons detained in special militia facilities, senior officers of the municipal district authorities, administrative officials at the oblast level and the Ministry of Internal Affairs conduct a detailed review and, depending on the outcome, take appropriate measures including prosecution of guilty internal affairs officials.

62. The time limits for detention in special militia facilities are specified in article 11 of the Militia Act and article 263 of the Code of Administrative Offences ratified by the Decision of the Ukrainian Supreme Soviet of 7 December 1984, as amended and supplemented on 1 August 1997. Persons held for administrative offences may be kept in administrative detention for a maximum of three hours. If necessary, a person may be detained for up to 72 hours in order to establish his identity or clarify the circumstances of an offence provided that a procurator is notified in writing within 24 hours, or for up to 10 days when the offender has no identity papers, if so authorized by a procurator. Persons guilty of petty hooliganism; insulting or knowingly failing to comply with the directions or orders of a militia officer, volunteer militia officer or member of the armed forces; or openly exhorting others to defy the directions of a militia officer, may be detained until their case is heard by a judge or the chief officer (or deputy chief officer) of an internal affairs authority. The same stipulations apply to persons who fail to observe the procedure for organizing and holding meetings, rallies, marches and processions, who are in contempt of court, or who engage in unauthorized street trading.

63. Article 32 of the Code of Administrative Offences states that administrative detention is the appropriate sanction for certain varieties of administrative offence. Its use is restricted to exceptional circumstances, and the period of detention must not exceed 15 days. District (municipal) courts and judges are empowered to order the use of administrative detention.

64. Article 11 of the Militia Act empowers the militia to detain suspected vagrants in special units, on the authority of the procurator, for up to 30 days.

65. Article 6 of the Judicature Act establishes the right of Ukrainian citizens to a judicial remedy in respect of attacks on their honour, dignity, lives, health, personal liberty and property.

66. The Code of Criminal Procedure (Certain Articles concerning the Right of Defence of Suspects, Accused Persons and Defendants) (Amendment and Supplement) Act of 23 December 1993 introduced changes to article 44 of the Code, which stipulates that defence counsel may become involved in a case from the moment charges are preferred, or, if a suspect is detained or remanded in custody as a preventive measure, from the moment the official record of detention or the committal order is served, and in any event no later than 24 hours following the suspect's arrest.

67. Under articles 4 and 5 of the Criminal Code, all persons (except individuals benefiting from diplomatic immunity) are liable under the Code if they have committed crimes in Ukrainian territory or have been brought before the Ukrainian courts, even if the crime of which they stand accused was committed outside Ukraine. In accordance with all currently applicable international treaties on judicial assistance in criminal matters, the Government pledges to institute criminal proceedings against Ukrainian nationals who have committed a crime abroad but who could not be extradited to the competent bodies of the State involved with a view to prosecution (procedure of transfer of proceedings). A list of international treaties on judicial assistance in criminal matters is annexed to this report*.

Articles 8 and 9

68. Ukraine decides on extradition issues and offers judicial assistance in accordance with the provisions of international treaties currently in force (see list in annex 2*). The Office of the Procurator-General is the coordinating body for the implementation of bilateral and multilateral international treaties on judicial assistance in criminal matters. It also assists the law-enforcement authorities of countries with which Ukraine does not have treaty relations, on a so-called "good-will" basis.

Article 10

69. The rules covering interrogation of suspects and accused persons, arrest, and detention as a preventive measure during the pre-trial investigation are regulated by section 2 of the Code of Criminal Procedure (chaps. 12 and 13). Pre-trial detention procedure is also dealt with in the Pre-Trial Detention Act, the Corrective Labour Code, and other legislative acts.

70. Persons taken into custody in connection with criminal proceedings are detained in strict compliance with the relevant provisions of the Constitution, the Universal Declaration of Human Rights, and other international legal norms and standards concerning the treatment of prisoners. Article 1 of the Pre-Trial Detention Act proscribes actions intended to cause physical or mental suffering or to degrade the individual.

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* Available for consultation with the secretariat.

71. Article 5 of the Ukrainian Security Service Act of 25 March 1992 defines the activities of the Ukrainian Security Service in relation to human rights. In performing its functions, the Service must uphold human rights and freedoms. Security agencies and their personnel must respect the dignity of the individual and treat people humanely. In exceptional circumstances, certain personal rights and freedoms may be temporarily restricted, in the manner and within the limits laid down in the Ukrainian Constitution and laws, with a view to preventing and detecting crimes against the State. Unlawful restrictions on legitimate human rights and freedoms are inadmissible and punishable under the law. If in the course of their duties the personnel of a security agency violate human rights or freedoms, the agency concerned must take steps to reinstate those rights or freedoms, compensate the moral and material injury suffered, and prosecute the guilty parties. The Ukrainian Security Service is required to furnish a written explanation to injured parties within one month, stating why their rights and freedoms were restricted. The injured parties have the right to lodge a complaint with the courts against unlawful actions by officials (employees) and agencies of the Ukrainian Security Service.

72. A special institute in Kiev and a similar college in Dnepropetrovsk provide occupational training for staff of the various agencies and institutions of the State Penal Correction Department. The Chernigov Law School is likewise affiliated to the Department.

73. Among the positive developments which have taken place in Ukraine since the consideration of the third report are:

(a) Replacement of capital punishment by life imprisonment. Under the Criminal, Criminal Procedure and Corrective Labour Codes (Amendment) Act of 22 February 2000, the death penalty has been replaced by life imprisonment. A new provision, article 25-2, has been introduced into the Criminal Code, which stipulates that particularly serious crimes are punishable by life imprisonment. The same sentence may also be imposed for offences specifically referred to in the Code if a court decides that deprivation of liberty for a fixed term is not appropriate. The Code further stipulates that offenders under 18 or over 65 years of age, or women who were pregnant at the time of the offence or at the time of sentencing, may not be sentenced to life imprisonment;

(b) Ban on State secrets containing information regarding breaches of human and civil rights and freedoms. The updated version of the State Secrets Act contained in the State Secrets (Amendment) Act of 21 September 1999 stipulates that information concerning breaches of human and civil rights and freedoms or unlawful actions by central and local authorities and officials may not be classified as State secrets. It follows that information of this nature may not be subject to blanket secrecy, nor may it be subject to reporting or publishing restrictions in the mass media. Moreover, no restrictions may be imposed on its divulgence or transmission to another State or an international organization (this refers to article 9 of the Convention);

(c) Legislative arrangements concerning the Commissioner for Human Rights under the jurisdiction of the Supreme Council (*Verkhovna Rada*). The Commissioner for Human Rights of the Supreme Council Act of 23 December 1997 states that the Commissioner for Human Rights (hereinafter, the Commissioner) exercises parliamentary supervision over observance of the constitutionally enshrined rights and freedoms of individuals and citizens and protects the rights of all persons in Ukrainian territory and within Ukrainian jurisdiction. The

Commissioner performs his functions independently of other State bodies and officials. The Commissioner's work supplements existing remedies for the protection of the constitutionally-enshrined rights and freedoms of individuals and citizens; he neither abrogates these remedies, nor does he review the competence of other State bodies to protect rights and freedoms or redress wrongs. Article 21 of this Act guarantees the protection of human rights in dealings with the Commissioner, i.e. everyone shall have unrestricted access to the Commissioner in accordance with the procedure provided for by current legislation. Persons deprived of their liberty may address written communications to the Commissioner or his representatives, in which case no restriction shall be placed on their right of correspondence. Communications by such persons must be forwarded to the Commissioner within 24 hours. Correspondence between the Commissioner or his representatives, and detainees, remand prisoners, persons in custody, prisoners in custodial institutions of a coercive or curative nature, or any other Ukrainian citizens, aliens or stateless persons irrespective of their whereabouts shall be exempted from censorship or checks. Persons in breach of this article are liable to prosecution under existing legislation (this refers to article 13 of the Convention);

(d) Presidential scrutiny of the legality of laws and regulations promulgated by the Ukrainian Security Service. A specially appointed official, the Presidential Commissioner on Monitoring the Work of the Ukrainian Security Service (hereinafter, the Commissioner), scrutinizes the work of the Ukrainian security services on an ongoing basis in accordance with article 32, paragraph 2, of the Ukrainian Security Service Act. According to the Regulations on continuous presidential scrutiny of the work of the Ukrainian Security Service ratified by Presidential Decree No. 1172 of 22 October 1998, the Commissioner's principal functions are to ensure that the constitutional rights of citizens and the law are observed by police units of the Ukrainian Security Service, and to verify that regulations, orders, directives, instructions and guidelines issued by the Service are in compliance with the Constitution and Ukrainian legislation. Presidential Decree No. 767/99 of 29 June 1999 ratified a corresponding Regulation on the registration of legally binding acts of the Ukrainian Security Service pertaining to organized searches for suspects, counter-intelligence and police work. This Regulation stipulates that laws and regulations issued by the Ukrainian Security Service concerning the rights, liberties and legitimate interests of individuals and citizens must be registered by the Commissioner. He may refuse to register a law or regulation if it does not conform to the Constitution or law of Ukraine. An unregistered law or regulation is deemed to be invalid (this refers to article 11 of the Convention).

Legal training for prison officers in the spirit of the Convention

74. Staff at remand centres administered by the Ukrainian Security Service attend regular courses on various legislative acts concerning the rights, liberties and legitimate interests of the individual, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (this refers to article 10 of the Convention).

75. Also on the subject of article 10, paragraph 34 of the third periodic report refers to article 5 of the Ukrainian Security Service Act, which states that, in the exercise of its functions, the Service must uphold human rights and freedoms, and that unlawful restrictions on legitimate human rights and freedoms are inadmissible and punishable under the law. Those provisions remain in force.

Article 11

76. In accordance with the blueprint for reform of Ukraine's internal affairs agencies approved by the Cabinet of Ministers on 24 April 1996, the penal correction system has been removed from the jurisdiction of the internal affairs apparatus. Likewise, in accordance with Cabinet Decision No. 1451 of 9 August 1999, the public security militia is no longer responsible for sobering up drunkards, a function that sits awkwardly with its other duties.

77. Owing to economic and social problems, some short-term detainees and remand prisoners have occasionally been held in custody for longer than the prescribed period. Cases of overcrowding have also been noted. This is because, in view of the overcrowding that exists in remand centres administered by the State Penal Correction Department, these units are unable to accommodate all the "special prisoners" from holding facilities who need to be housed in remand centres. Nevertheless, the Ministry of Internal Affairs is endeavouring to take all necessary steps to ensure that the period spent in custody by various categories of prisoners meets the defined standards.

78. Under the Act of 23 December 1993, articles 21 and 43 of the Code of Criminal Procedure have been updated as regards the right of defence of suspects, accused persons and defendants. Now, for the first time, article 21 stipulates that a person conducting an initial inquiry, an investigator, a procurator, a judge or a court must, before proceeding to interrogate a suspect, accused person or defendant, explain to him that he is entitled to defence counsel, and make an official record to that effect. Article 43-1 establishes the suspect's right to a defence counsel, to meet his counsel before the initial interrogation, and to request procuratorial verification of the lawfulness of his detention. Moreover, an Act of 15 December 1992 made it possible to challenge the use of detention as a preventive measure in the courts and instituted judicial verification of the lawfulness of and grounds for detention.

79. Article 236-3 of the Code of Criminal Procedure states that a detainee, or his defence counsel or lawful representative, may lodge an appeal against a procuratorial detention order with the district (municipal) court in the vicinity of the procurator's office concerned. Certain acts have been decriminalized, resulting in the repeal of 34 articles of the Criminal Code. These include articles 61 (sabotage), 64 (intent to organize and commit particularly serious crimes against the State and membership of an anti-Soviet organization), 65 (particularly dangerous crimes against the State to the detriment of another workers' State), 74 (evasion of military service or taxes in wartime), 80-1 (failure to report crimes against the State), 80-2 (concealment of crimes against the State), and 92 (crimes against the State or the public property of other socialist States).

80. Pursuant to the Criminal Code, Code of Criminal Procedure and Code of Administrative Offences (Supplement and Amendment) Act and the Decision of the Supreme Council on the introduction and enforcement thereof dated 7 July 1992, persons sentenced under articles 85, 87-1, 87-2, 146, 147-1, 149, paragraph 1, 150, 151, 152, 154, paragraph 4, 151-1, 154-4, 156, 195, 195-1, 196, 197, 214 and 224-1 of the Criminal Code were released after their offences were decriminalized. Sentences handed down in connection with articles 81, 82, 84, 86, 86-1, 149, paragraphs 2 and 4, 155-6, paragraphs 2 and 3, 168 and 215, paragraph 1, of the Criminal Code were adjusted to reflect the fact that the punishments prescribed thereunder had been mitigated.

81. The exposition of article 15 of the Criminal Code, which deals with self-defence, has been improved. The article also enshrines the universal right of self-defence.

82. A new provision, article 46-2, has been incorporated into the Criminal Code, which stipulates that deferred sentences shall be imposed on pregnant women and mothers of children under three. Another new provision (art. 480-3) has been added to the Code specifying the procedure for the enforcement and abrogation of deferred punishment for this category of women.

Article 12

83. Article 4 of the Code of Criminal Procedure states: "Courts, procurators, investigators and bodies conducting an initial inquiry are required, within their respective spheres of competence, to initiate criminal proceedings when the indicia of a crime are discovered and to take all steps according to law to establish the facts of the case and administer punishment".

84. Article 100, paragraph 2, of the Code of Criminal Procedure requires investigators and bodies conducting an initial inquiry to forward a copy of their decision to initiate criminal proceedings or, alternatively, to dismiss a case, to a procurator within 24 hours.

85. The Code of Criminal Procedure (Amendment) Act of 30 June 1993 specifies that an initial inquiry into a lesser crime must be conducted within 10 days of the perpetrator having been identified. In the case of more serious crimes, the initial inquiry must be conducted at least 10 days after proceedings have been set in motion. By an Act of 23 December 1993, a new paragraph was added to article 143 of the Code of Criminal Procedure specifying that defence counsel may be present during the interrogation of an accused person if the accused so desires, and in the circumstances specified in article 46, paragraph 3, of the Code, the presence of defence counsel is mandatory.

Article 13

86. An additional provision has been incorporated into the Code of Criminal Procedure which states that it is possible to lodge an appeal in the courts against a refusal to initiate proceedings, the dismissal of a case, or a procuratorial detention order. The procedure for hearing such appeals has been established.

87. Under article 22 of the Pre-Trial Detention Act, the Procurator-General of Ukraine and his subordinate procurators ensure compliance with the law in pre-trial detention facilities. In exercising this function, procurators may visit places of detention and prisons at least once a month, where they are required to hold face-to-face meetings with convicted prisoners and prisoners awaiting trial. When they receive complaints about administrative actions and decisions, procurators must check the facts and, if the allegations are justified, take appropriate measures to deal with the problem.

88. Procuratorial decisions and directives on compliance with established legal procedure and conditions of detention or custody must be implemented by the administration of pre-trial detention facilities. Failure to implement legitimate procuratorial demands without good cause is an offence under the law (Procurator's Office Act, art. 8).

89. The procuratorial system exercises its functions independently. State and government bodies, officials, the mass media, and voluntary or political organizations or movements and representatives thereof are not permitted to interfere in procuratorial supervision of compliance with the law or procuratorial investigation of actions exhibiting the indicia of a crime. The bringing to bear of any form of influence on a procuratorial officer with a view to obstructing the performance of his duties or procuring an unlawful decision is an offence according to law (Procurator's Office Act, art. 7).

90. Statistics indicate that, in the course of 1999, procurators made visits to 4,149 Ministry of Internal Affairs holding facilities, remand prisons of the Ukrainian Security Service, corrective-labour colonies and psychiatric hospitals under rigorous and strong surveillance regimes (compared with 3,780 such visits in 1998).

91. Last year procuratorial checks revealed a total of 5,507 assorted breaches of the law at confinement facilities (as against 4,626 breaches in 1998). As a result of their findings, procurators issued 1,435 instructions to rectify breaches of the law (compared with 1,230 in 1998); 455 protests against unlawful acts and decisions (381 in 1998); and 1,719 orders and directives on measures to deal with irregularities of various kinds (as against 1,512 in 1998). Disciplinary proceedings were set in motion against 1,942 staff members at confinement facilities (compared with 1,642 in 1998), and criminal proceedings were brought against 19 (15 in 1998).

92. Unfortunately, the official statistics cannot be broken down into separate categories of irregularities brought to light at confinement facilities. Thus, on the basis of these data, it is impossible to tell whether the irregularities were breaches of the Convention, and if they were, of what article. Even criminal prosecutions of staff members do not imply that they have committed acts of torture. Procuratorial checks also reveal cases of staff passing drugs to convicted prisoners, receiving bribes from them, and other offences.

93. In addition to special procuratorial supervision of compliance with the law in this area, as stipulated by article 55 of the Constitution, the rights and freedoms of individuals and citizens are protected by the courts. The same article states that everyone has the right to go to law to challenge the decisions, actions or omissions of the central and local authorities, officials and public servants.

94. The Parties to Criminal Proceedings (Security) Act makes provision for the use of means of protection during investigations and trials with respect to crimes involving torture.

95. Everyone has the right of recourse to the Commissioner for Human Rights of the *Verkhovna Rada* for the protection of his or her rights.

96. Following the exhaustion of domestic legal remedies, everyone has the right of recourse to the relevant international judicial institutions or relevant bodies of international organizations of which Ukraine is a member, or in which it participates, for the protection of his or her rights and freedoms.

Article 14

97. Pursuant to the Criminal Code, Code of Criminal Procedure and Code of Administrative Offences (Supplement and Amendment) Act and the Decision of the Supreme Council on the introduction and enforcement thereof dated 7 July 1992, an additional provision (art. 53-1) has been incorporated into the Code of Criminal Procedure requiring a body conducting an initial inquiry, an investigator, a procurator or a court to compensate citizens for injuries which result from unlawful actions on their part.

98. A supplementary provision, article 93-1, was added to the Code of Criminal Procedure on 22 April 1993; it concerns reimbursement of the costs of in-patient treatment for victims of crime. Under the Injury Compensation Act, which deals specifically with injuries to citizens resulting from unlawful actions by agencies conducting an initial inquiry or pre-trial investigation, the procuratorial system or the courts, Ukrainian citizens are entitled to claim compensation. Compensation is payable in full irrespective of the culpability of the official, agency conducting the initial inquiry or pre-trial investigation, procurator's office or court involved.

99. As regards rehabilitation, the individual concerned must apply to the procurator's office or court that issued the most recent judicial decision. If the individual disagrees with a court ruling or decision, he or she may contest it in a higher court by way of cassation.

100. Article 56 of the Constitution stipulates that everyone has the right to compensation at the expense of the State or local authorities for material or moral injury caused by the unlawful decisions, actions or omissions of central or local authorities and their officials or employees in the performance of their duties.

101. The procedure for payment of compensation to citizens in connection with the unlawful actions of agencies conducting an initial inquiry or pre-trial investigation, a procurator's office or a court, in addition to the grounds for compensation and the sum involved, are all dealt with in special Act No. 266/94-BP of 1 December 1994. This Act stipulates that compensation shall be payable in respect of the following types of injury:

(a) Wrongful conviction, indictment, arrest or detention, unlawful search, seizure or impounding of property in the course of a criminal investigation or judicial proceedings, unlawful dismissal from employment and other defects of procedure which prejudice a citizen's rights;

(b) Unlawful use of administrative detention or attachment of earnings, unlawful confiscation of property, or unlawful imposition of a fine;

(c) Unlawful police investigation.

102. In the circumstances referred to in article 14, paragraph 1, of the Convention, compensation is payable in full irrespective of the culpability of the official, agency conducting the initial inquiry or pre-trial investigation, procurator's office or court involved.

103. Under the Ukrainian Criminal Code, it is an offence to arrest, detain or compel a person to appear before the investigating authorities or the courts knowing such a step to be unlawful (art. 173). It is also an offence to initiate criminal proceedings against a person known to be innocent (art. 174) or for a judge to hand down a knowingly wrongful judgement, decision or ruling (art. 176).

Article 15

104. Neither the law nor practice has changed as far as these provisions are concerned.

Article 16

105. Acts of torture or cruel, inhuman or degrading treatment or punishment are emphatically prohibited throughout Ukrainian territory. Domestic law makes due provision for the prosecution of persons who commit unlawful acts of this nature.